

## LEASEHOLD VS. FEE SIMPLE OWNERSHIP

By: Sara E. Barry, CMCA PCAM, UNLV Certified paralegal, Nevada licensed insurance producer.

One of the questions asked on some of the web based document resale questionnaires/packages is “Is the property owned Fee Simple or is it owned as a Leasehold Estate?”

How do you as the Community Manager answer that question? Do you have to download all of the documents recorded against a property to find out and where would we find such things to be aware of?

Most people know of one type of real estate ownership; fee simple. There are a handful of states that have another form of ownership known as leasehold. If you lived in Hawaii, New York or Florida, you would be more familiar with this as it is more common there to have leasehold estates where you own the house on which the land sits. I understand that Utah also may have some School Trust Fund Leasehold Properties, which are interesting.

What is the difference?

**Fee Simple:** Fee simple ownership is probably the most familiar form of ownership to buyers of residential real estate. Depending on where you are from, you may not know of any other way to own real estate. Fee simple is sometimes called fee simple absolute because it is the most complete form of ownership. A fee simple buyer is given title (ownership) of the property, which includes the land and any improvements to the land in perpetuity. Aside from a few exceptions, no one can legally take that real estate from an owner with fee simple title. The fee simple owner has the right to possess, use the land and dispose of the land as he wishes. Selling it, giving it away, trading it for other things, leasing it to others or passing it to others upon death. Losing the property to the association for lack of payment of assessments or to the mortgage holder for non-payment are two of the exceptions.

**Leasehold:** A leasehold interest is created when a fee simple land-owner (Lessor) enters into an agreement or contract called a ground lease with a person or entity (Lessee). A Lessee gives compensation to the Lessor for the rights to use and enjoyment of the land much as one buys fee simple rights; however, the leasehold interest differs from the fee simple interest in several important respects. First, the buyer of leasehold real estate does not own the land; they only have a right to use the land for a pre-determined amount of time. Second, if leasehold real estate is transferred to a new owner, use of the land is limited to the remaining years covered by the original lease. At the end of the predetermined period, the land reverts back to the Lessor, and is called reversion. Depending on the provisions of any surrender clause in the lease, the buildings and other improvements on the land may also revert to the lessor, which could cause serious issues. Finally, the use, maintenance, and alteration of the leased premises are subject to any restrictions contained in the lease.

Important Leasehold terms to know:

- 1) Assignor - A person, company or entity who transfers rights they hold to another entity. The assignor transfers to the assignee
- 2) Assignee – A person to whom a right or liability is legally transferred. A person appointed to act for another. A person to whom a right or property is legally transferred.

- 3) Lease Term – The length of the lease period (usually 55 years or more).
- 4) Lease Rent – The amount of rent paid to the Lessor for the use of the land.
- 5) Fixed Period – The period in which the lease rent amount is fixed.
- 6) Expiration Date – The date that the lease ends.
- 7) Renegotiation Date – Date after the fixed period that the lease rent is renegotiated.
- 8) Reversion – The act of giving back the property to the Lessor.
- 9) Surrender – Terms of the reversion
- 10) Leased Fee Interest – An amount a lessor will accept to convey fee simple ownership.

After some research, I found out that in Nevada, very few homes are owned as leasehold estates. The Indian reservation in Southern Nevada outside of Laughlin have what is called Sublease Agreements with a CIC established. The owners own the house, but owners sublease the land from the tribe's corporation formed for this specific purpose. There is a board of directors who helps enforce the CC&R's they received in escrow, but it becomes more problematic than that. This type of ownership has caused some problems because the leases may come due for renewal after a few years (as dictated in the leasing agreements) and would have to be renewed. I am sure that this was disclosed in escrow, but with the developer's agents want to sell the home, it would have been downplayed quite a bit. The document that I was provided below, used for this community in Laughlin, did not have the renewal information on it, but rather referred you to another document, which would have been recorded against the home. Notice the difference in the terminology as used below.

For purposes of managers using this article to help fill out these forms, unless someone has brought to your attention that the properties sit on an Indian Reservation or some other very unusual form of Leasehold community, you are most likely safe saying that it is owned fee simple.

**SAMPLE FOR LAUGHLIN LEASEHOLD DOCUMENT - USED FOR THAT COMMUNITY**  
**BY FIDELITY TITLE COMPANY**

**After Recording Mail to**

**ASSIGNMENT OF HOMESITE SUBLEASE AGREEMENT**

**APN:**  
**PTN:**

This Homesite Sublease Assignment is entered into as of \_\_\_\_\_ by and between  
 \_\_\_\_\_ ('Assignor') and  
 \_\_\_\_\_ ('Assignee')

A Subleasehold as created by that certain Homesite Sublease entered into between Mojave Valley Resort, Inc. a Nevada corporation as Lessor and \_\_\_\_\_ and recorded \_\_\_\_\_ as Instrument/File No. \_\_\_\_\_ in Book \_\_\_\_\_ of Official Records for its term, upon subject to all of the provisions contained therein all in Clark County, Nevada Records, for the term, upon and subject to all provisions contained in said document and in said

lease. And Recorded as document number \_\_\_\_\_ Land Titles Records Bureau Indian Affairs subsequently conveyed to \_\_\_\_\_

Assignor and Assignee mutually represent and warrant to each other that this Assignment is executed in connection with and simultaneously with the sale of the "Home" as defined in the Homesite Sublease, which is located on the Homesite, by Assignor to Assignee. Assignor agrees to indemnify Assignee and hold it harmless from and against any claim, expense, or liability under the Homesite Sublease arising prior to the effectiveness of this Assignment. Assignee agrees to indemnify Assignor and hold it harmless from and against any claim, expenses or liability arising under the Homesite Sublease after the effectiveness of this Assignment.

Pursuant to the provisions of the Homesite Sublease, this Assignment is effective upon execution, delivery of a copy of the fully executed Assignment to the Landlord, and payment of a \$500 fee to Landlord. Pursuant to the Homesite Sublease, the consent of Landlord to this Assignment is not otherwise required.

**Assignor:**

\_\_\_\_\_

\_\_\_\_\_

**STATE OF**

**COUNTY OF**

**This instrument was acknowledged before me \_\_\_\_\_, on \_\_\_\_\_, 2014  
by**

**Witness my hand and Official Seal,**

\_\_\_\_\_  
**Notary Public**

**My Commission Expires:**

**Printed name of Notary**

**HOMESITE SUBLEASE AGREEMENT  
SIGNATURE ACKNOWLEDGEMENT**

**Assignee:**

\_\_\_\_\_  
\_\_\_\_\_

**STATE OF**

**COUNTY OF**

**This instrument was acknowledged before me \_\_\_\_\_ by \_\_\_\_\_**

**On \_\_\_\_\_, 2014**

**Witness my hand and Official Seal,**

\_\_\_\_\_  
**Notary Public**

**My Commission Expires: \_\_\_\_\_**

**Printed name of Notary \_\_\_\_\_**